

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 13

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte STEVEN N. GOSS, GARY M. KING
JEFFREY P. KUBALA, JOHN C. NAGY,
DAVID H. SURMAN, and
WENDELL W. WILKINSON

Appeal No. 2001-2348
Application 08/927,222

ON BRIEF

Before KRASS, JERRY SMITH,, and FLEMING, Administrative Patent Judges.

JERRY SMITH, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on the appeal under 35 U.S.C. § 134 from the examiner's rejection of claims 1-15, which constitute all the claims in the application.

The disclosed invention pertains to an information handling system and method in which one or more requesters issue requests to a request handler executing on a processor resource.

The invention defines a plurality of modes of executing the request handler, and the modes of executing the request handler are dynamically adjusted based on the number of requests received within a predetermined interval.

Representative claim 1 is reproduced as follows:

1. In an information handling system in which one or more requesters issue requests to a request handler executing on a processor resource, a method of dynamically controlling the execution of said request handler on said processor resource, comprising the steps of:

defining a plurality of modes of executing said request handler on said processor resource, said modes having differing amounts of utilization of said processor resource;

initially selecting one of said modes of executing said request handler on said processor resource;

determining the number of requests received from said requesters within a predetermined interval while executing said request handler in a selected mode; and

transitioning between said modes of executing said request handler in accordance with said number of requests received within said predetermined interval in said selected mode.

The examiner relies on the following references:

Nitta et al. (Nitta) 5,287,521 Feb. 15, 1994

Rachel Becker, OracleTM Unleashed, 1996 by Sams Publishing.

Claims 1-15 stand rejected under 35 U.S.C. § 103(a). As evidence of obviousness the examiner offers Nitta taken alone

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with respect to claims 1-6, 8-11, 13 and 15, and Nitta in view of Becker with respect to claims 7, 12 and 14.

Rather than repeat the arguments of appellants or the examiner, we make reference to the brief and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellants' arguments set forth in the brief along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon and the level of skill in the particular art would not have suggested to one of ordinary skill in the art the obviousness of the invention as set forth in claims 1-15. Accordingly, we reverse.

Appellants have indicated that for purposes of this appeal the claims within each rejection will all stand or fall together as a single group [brief, page 6]. Consistent with this

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indication appellants have made no separate arguments with respect to any of the claims on appeal within each group. Accordingly, all the claims before us subject to each rejection will stand or fall together. Note In re King, 801 F.2d 1324, 1325, 231 USPQ 136, 137 (Fed. Cir. 1986); In re Sernaker, 702 F.2d 989, 991, 217 USPQ 1, 3 (Fed. Cir. 1983). Therefore, we will consider the rejection against independent claim 1 and dependent claim 7 as representative of all the claims on appeal.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825

(1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984).

These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness.

Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1039, 228 USPQ 685, 686 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d 1048, 1052, 189 USPQ 143, 147 (CCPA 1976). Only those arguments actually made by appellants have been considered in this decision. Arguments which appellants could have made but chose not to make in the brief have not been considered and are deemed to be waived by appellants [see 37 CFR § 1.192(a)].

With respect to independent claim 1, the examiner has indicated how he finds the claimed invention to be obvious over the teachings of Nitta [answer, page 3]. Appellants argue that

the various locking modes of Nitta do not have differing amounts of utilization of a processor resource as claimed. Specifically, appellants argue that the number of processes accessing a resource and the amount of utilization of that resource are not necessarily related. Appellants also argue that the decision to transition from one lock mode to another lock mode in Nitta is not based on the number of requests received within a predetermined interval as claimed [brief, pages 7-9].

With respect to the first argument, the examiner responds that the exclusive lock mode of Nitta has a different amount of utilization of the processor resource than the shared lock mode because the exclusive lock mode performs the additional function of actually deleting elements from the resource. With respect to the second argument, the examiner responds that he has interpreted the total access time of the resource handler to be the claimed predetermined interval. Using this interpretation, the examiner asserts that Nitta progresses from one lock mode to another lock mode based on the number of requests received during a predetermined interval [answer, pages 6-8].

We will not sustain the examiner's rejection of the claims based on Nitta taken alone. We agree with appellants that Nitta does not teach the limitation of determining the number of

requests received within a predetermined interval and transitioning between modes based on this number of requests. Nitta transitions between the shared lock mode and the exclusive lock mode when a counter indicates that there are no pending requests to use the shared lock. The specific number of requests for access to the shared lock which is indicated by the counter is irrelevant in Nitta. There is no predetermined interval in Nitta, and the examiner's finding that this interval equals the total access time of the handler is incorrect because this total access time is not predetermined. Additionally, the transitioning in Nitta is not based on the number of requests received, but rather, it is based on the fact that all the requests have been handled regardless of the number. In other words, the handling of all requests in Nitta rather than the actual number of requests controls the transitioning. The interval it takes to handle all requests is not predetermined in Nitta.

With respect to the rejection of claims 7, 12 and 14 based on Nitta and Becker, we will not sustain the rejection of these claims either. The examiner's findings with respect to Nitta are deficient for reasons discussed above. Since the additional teachings of Becker do not overcome the deficiencies

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of Nitta discussed above, the examiner's rejection of claims 7, 12 and 14 fails to establish a prima facie case of obviousness.

In summary, we have not sustained either of the examiner's rejections of the claims on appeal. Therefore, the decision of the examiner rejecting claims 1-15 is reversed.

REVERSED

ERROL A. KRASS)	
Administrative Patent Judge)	
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JERRY SMITH)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
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